IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 957 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRADIPBHAI PADMABHAI SAVANI

Versus

JASWANTSINH DIGAMBARSINH CHAUHAN

Appearance:

MR YM THAKKAR for Petitioner

MR NIGAM R SHUKLA for Respondent Nos.1 and 2

MR KP RAVAL, APP for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/04/2000

C.A.V. JUDGEMENT

Rule. Mr.Nigam R. Shukla, learned counsel for the respondent Nos.1 and 2 and Mr.K.P.Raval, learned APP for the respondent No.3 waive service of notice of Rule.

2. By way of present petition, petitioner has challenged the order dated 20th September, 1999 passed by the Additional Sessions Judge, Bhavnagar in Criminal Revision Application No.179 of 1998 as well as the order dated 18th August, 1998 passed by the First Joint Judicial Magistrate (First Class), Bhavnagar whereby interim custody of the vehicle, namely Ambassador Car bearing No.GJ-4D-0062 has not been given to the present petitioner.

3. Brief facts leading to the present petition are as under:

3.1 The petitioner, who is the owner of the Ambassador Car bearing registration No.GJ-4D-0062, has handed over the custody of the said vehicle to his real brother, Dr.Manubhai Savani (complainant). Son of Manubhai is a friend of accused Nos.1 and 2 and as they wanted to go out of station, they took the car of the petitioner herein on 16-8-1997 but thereafter, the accused Nos.1 and 2 refused to hand over the same to petitioner. Ultimately, brother of the petitioner lodged a complaint in question before the bhavnagar `A' Division and the same was registered as C.R. No.I-343 of 1998. Thereafter, Police started investigation and arrested accused Nos.1 and 2 and seized the vehicle in question from the accused on 18-7-1998.

3.2 Thereafter, present petitioner submitted an application under Sec.451 of Cr.P.C. for obtaining interim custody of the vehicle in question before the learned Judicial Magistrate, First Class on 21-7-1998. After hearing the learned counsel for the respective parties, learned Judicial Magistrate, First Class did not grant the interim custody of the vehicle either to the present petitioner or to the accused. Against the said order, present petitioner has preferred Criminal Revision Application No.179 of 1998 before the learned Addl. sessions Judge, Bhavnagar which was rejected by the learned Addl. Sessions Judge by way of order dated 20th September, 1999 by confirming the order passed by the learned Judicial Magistrate, First Class which is giving rise to present petition.

4. I have heard learned counsel for the petitioner, Mr.Y.M.Thakkar, learned counsel for the respondents Nos.1 and 2, Mr.Nigam Shukla and learned APP for the respondent No.3-State, Mr.K.P.Raval.

5. I have gone through the reasoned order passed by

the two courts. It is established from the record and proceedings that present petitioner is the registered owner of the vehicle in question for which necessary documentary evidence has been produced by him before the Court below. R.T.O. record shows that vehicle has been registered in his name as owner of the vehicle whereas it is the case of the respondent Nos.1 and 2 that the vehicle was purchased in partnership and necessary form was given to the present petitioner to register the same in two names. Instead of doing so, he has fraudulently registered the same in his own name only.

6. Record indicates petitioner's name as the owner of the vehicle in R.T.O. record. Though it has been stated on oath by the respondent Nos.1 and 2 that the vehicle was purchased in partnership, there is no prima-facie evidence to prove the same except the oral version of the respondent Nos.1 and 2. Furthermore, there is a positive report of the investigating officer to hand over custody of the vehicle in question to the present petitioner, but court below has come to the conclusion that there is a dispute regarding the ownership of the vehicle between the parties and, therefore, it is not just and proper to hand over the interim custody of the vehicle in question to either of the parties. But facts remain that vehicle is in Police custody since 1998 and trial will take its own time and in the meantime, interim custody of the vehicle will not be given to anyone, it will become a junk and, therefore, it is advisable to pass an order for handing over custody of the vehicle to either of the parties. In view thereof, person who is having better title of the vehicle in question should be given the interim custody subject to the final outcome of the case.

7. It has been held in a case reported in AIR 1967 (Guj.) 80 that possession is not by itself a true criterion for granting custody. Person in whose name vehicle is with the registering authority is entitled to custody of it unless any other person establishes superior title. Here in this case, otherside, i.e. respondent Nos.1 and 2 could not establish their superior title over the present petitioner whereas present petitioner is a person in whose name vehicle stands with registering authority and, therefore, he is having better title over the vehicle in question than the respondent Nos.1 and 2. It is to be noted that it is a question of only interim custody subject to result of the final one and, therefore, it is required to be given to the petitioner. Therefore, orders passed by the courts below are required to be quashed and set aside. In the same

way interest of the respondents Nos.1 and 2 during the pendency of the trial is also required to be taken into consideration and, therefore, looking to the price of the vehicle, if surety for an amount of Rs.1,00,000/- will be imposed, then it will meet the end of justice.

8. Order dated 20-9-1999 passed by the learned Addl. Sessions Judge, Bhavnagar in Criminal Revision Application No.179 of 1998 as well as order dated 18-8-1998 passed by the learned First Joint Judicial Magistrate First Class, Bhavnagar are hereby quashed and set aside and vehicle, i.e. Ambassador Car bearing registration No.GJ-4D 0062 is ordered to be handed over to the present petitioner, i.e. Pradipbhai Padmabhai Savani on his furnishing solvent surety of Rs.1,00,000/(Rupees One Lakh only) before the trial court. Petitioner shall also not alienate, transfer or dispose of, etc. of the vehicle in question in any manner and he shalll keep the vehicle in good roadworthy condition during the pendency and final disposal of the criminal case. Rule is made absolute accordingly.

(R.P.DHOLAKIA,J.)

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